

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25/06/2004

CORAM

THE HONOURABLE MR.JUSTICE P.K.MISRA

W.P.No. 9050 of 2002 and W.P.No.9051 of 2002

Tamil Nadu Cooperative Oil Seeds
Growers' Federation Employees Union,
Represented by its General secretary,
25/C, 7th Street, Periyagopuram,
Thiruvannamalai 606 602. ..Petitiner in
both the W.Ps.

-Vs-

1. The State of Tamil Nadu
rep. by the Secretary to Government,
Labour and Employment Department,
Fort St.Geroge,
Chennai - 600 009.
2. The State of Tamil Nadu represented by
Special Commissioner and Secretary
to Government,
Agriculture Department,
Fort St.George,
Chennai - 600 009.
3. The Chairman and Managing Director,
Tamil Nadu Cooperative Oil Seeds Growers'
Federation Limited,
55, Thiru Vi.Ka. Industrial estate,
Ekattuthangal, Chennai - 600 097.
4. The Tamill Nadu Cooperative Marketing
Federation Limited,
91, St. Mary's Road,
Chennai - 600 018.
5. R.Rajkumar
5th respondent impleaded as per
order of the Court dt.15.4.2002
in WPMP.16066/2002 ..Respondents in
Respondent in both the W.Ps.

Writ Petition No.9050 of 2002 is filed to issue a Writ of Certiorarified

Mandamus, to call for the records of the first respondent in G.O.(D) No.165 Labour and Employment A1) Department dated 27.2.2002 and quash the said order dated 27.2. and consequently direct the first respondent to refer the proposal relating to the retrenchment of the workmen for adjudication to the Industrial Tribunal, Chennai.

Writ Petition No.9051 of 2002 is filed to issue a Writ of Certiorari to call for the records of the second respondent in G.O.Ms.No.345 Agriculture (OS) department dated 30.11.2001 and quash the said order dated 30.11.2001.

!For Petitioner : Mr.K.Chandru, Senior Counsel
for Mr.Yashod Vardhan

^For Respondents : Mrs.Thenmozhi Shivaperumal, A.G.P
for R1 & 2
Mr.R.Thyagarajan, Senior Counsel
for Mr.P.Anbarasan for R3
M/s.Ram & Goldwern for R4.

:O R D E R

The petitioner is Tamil Nadu Co-operative Oil Seeds Growers' Federation Employees Union represented by its General Secretary. The petitioner has filed this writ petition for issuing a Writ of Certiorari quashing G.O.Ms.No.345 dated 30.11.2001 issued by the Agriculture Department of the State Government and for quashing G.O.No.165 dated 27.2.2002 issued by the State Government in the Labour and Employment Department. Under the first G.O., the Tamil Nadu Government in the Department of Agriculture purported exercise of jurisdiction under Section 182(1) of the Tamil Nadu Societies Act have directed the Commissioner of Agriculture and Registrar of Oil Seeds Growers Co-operative Societies to take appropriate proceedings under Section 137 of the said Act. This G.O. has been specifically challenged in W.P.No.9051/2002. In the subsequent G.O. dated 27.2.2002 issued by the State Government in the Labour and Employment Department, permission has been granted under section 25 N of the Industrial Disputes Act to retrench 147 workers employed under the Tamil Nadu Co-operative Societies Oil Seeds Growers' Federation Limited.

2. The factual averments in both the writ petitions are similar and both the writ petitions were heard together and shall be governed by the present common judgment.

3. The Government of Tamil Nadu took a decision to establish a State level Oil seeds Growers Redressal in October 1980. Accordingly, the Tamil Nadu Co-operative Oil Seeds Growers Federation Limited(hereinafter referred to as "TANCOF") were set up on 3.1.1981 and registered as the Co-operative Societies under Section 9(1) of the Tamil Nadu Co-operative

Societies Act. The membership of the said Federation is open to all the registered Primary Oil Seeds Growers Co-operatives. In April 1985, the Government decided that the two Oil complex at Tiruvannamalai and Vridhachalam under the 4th respondent, Tamil Nadu Cooperative Marketing Federation Limited should be transferred to TANCOF and accordingly G.O.Ms.1185 dated 1.7.85 was issued by subsequent communication dated 4.7.1985. The staff of the 4th respondent were transferred to the 3rd respondent "TANCOF". The employees of TANCOF had been drawn from two sources namely the workmen of the two Oil Complex who were transferred from the 4th respondent and other employees directly recruited by "TANCOF". It is the case of the petitioner that the capacity of the two Oil Complex had been substantially expanded and as such Oil complex had lot of potential for earning profits but loss had been incurred due to the inefficient management. While the matter stood thus, the workmen received a notice on 31.12.2001 purporting to be three months' notice of retrenchment under Section 25 N of the Industrial Disputes Act. On receipt of the said notice, on behalf of the present petitioner representing the workers, a detailed representation was made on 5.2.2002 pointing out various aspects. Subsequently, a further representation was made to the third respondent namely 'TANCOF' pointing out that 53 technical and 17 ministerial staff were originally drawn from the 4th respondent and that they may be re-deployed. Under G.O. No.165 dated 27.2.2002 which has been specifically impugned in W.P.No.9050/2002, the Government granted permission to retrench 147 employees as indicated in the Annexure. In the said Government Order reference has been made to order dated 30.11.2001, which has been specifically impugned in the connected W.P.No.9051/200 2. In the latter Writ petition, the main contention of the petitioner is to the effect that the Government has no power to give any direction regarding winding up of the Co-operative Societies under Section 182 of the Co-operative Societies Act and such statutory power has been specifically vested with the Registrar under Section 137 of the Act.

4. In the writ petition challenging the grant of permission under Section 25 N(2) of Industrial Disputes Act, the main contention is to the effect that the Government or the authority exercises a quasi-judicial power while dealing with question under Section 25N and appropriate decision is to be taken by such authority on objective consideration of the reasons set forth by the management, but under the impugned order, the main reason seems to be the decision of the Government dated 30.11.2001 to wind up the third respondent "TANCOF". It is further contended that while according permission under Section 25N, the first respondent has not considered and applied its mind to the objections raised on behalf of the workmen.

5. So far as W.P.No.9051/2002 is concerned, it is necessary to refer to the relevant provisions contained in Sections 182 and 137 of the Co-operative Societies Act. The provisions are extracted hereunder.
Section 182: Power of Government to give directions:(1) The Government may, in the public interest, by order, direct the Registrar to make an inquiry or to take appropriate proceedings under this Act, in any case specified in the order, and the Registrar shall report to the Government the result of the inquiry made or in the proceedings taken by him within a period of six months from the date of such order or such further period as the Government may permit.

(2) In any case, in which a direction has been given under subsection

(1), the Government may, notwithstanding anything contained in this Act, call for and examine the record of the proceedings of the Registrar and pass such orders in the case as they may think fit:

Provided that before passing any order under this sub-section the person likely to be affected by such order shall be given an opportunity of making his representation.

Section 137: Winding up of registered Societies: (1) if the Registrar in the course of the audit under section 80 or after an inquiry has been held under section 81 or an inspection or investigation has been made under section 82 or an inspection of books has been made under Section 83 or on receipt of an application made by not less than three- fourths of the members of a registered Society or on receipt of the resolution of general body of a registered society, is of opinion that the Society ought to be wound up, he may issue a notice to the society calling upon it to make its representations to the Registrar within one month from the date of receipt of such notice and the society shall follow such procedure as may be prescribed in this regard. A copy of the notice issued to the society shall be communicated to every member of the society in such manner as may be prescribed. The Registrar may, after considering the representations, if any, received from the society or from any member and on being satisfied that the society ought to be wound up, issue an order to that effect and shall communicate such order to the society by registered post.

2) The Registrar may of his own motion and after giving a registered society an opportunity of making its representation by order in writing direct the winding up of a registered society-

- a) where it is a condition of the registration of the society that the society shall consist of at least twenty five members and the number of members has been reduced to less than twenty five; or
- b) where the society has not commenced working within the prescribed period or has ceased to work".

6. It is the contention of the petitioner that the provisions relating to winding up of the registered Society contained in Chapter 15 of the Tamil Nadu Co-operative Societies Act and Section 137 being a specific provisions wherein power has been vested with the Registrar, the Government does not have any power to give direction for winding up of the Registered Society. A perusal of Section 137 makes it clear that the Registrar has been vested with the authority to consider the question of winding up of the registered Society. Such proposal can be based on the basis of the audit under Section 80 or enquiry under Section 81 or inspection or investigation made under Section 82 or inspection of goods made under Section 83 or on receipt of application by not lesser than three forth of the members of the registered Society or on receipt of the resolution of the general body of the registered society. Section 82 empowers the Registrar to inspect or investigate or direct any person to make such investigation. Such an investigation can be relating to any misappropriation of retention of money or property breach of trust or mismanagement in relation to the Society. Such inspection can be carried on its own motion or on the basis of the application of the creditors. Section 182 contains a general power of the Government to give a direction in public interest. Section 182(1) envisages the Government may by order direct the Registrar to make an enquiry or to take appropriate

proceedings under the Act. Where such a direction is given under Section 182(1), the Government may notwithstanding anything contained in the Act call for and examine and record the proceedings of the Registrar and pass such orders in the case as they may think fit. The power under Section 182(2) is thus exercisable by the Government notwithstanding anything contained in the Act including Section 82 and 137.

7. In such view of the matter, the contention of the petitioner that the Government does not have any jurisdiction to give direction under Section 182 cannot be accepted. However, in the present case, it cannot be said that the Government had taken a decision to wind up the Co-operative Societies. The impugned direction dated 29.11.2001 can be construed to be a direction as contained in Section 182(1) directing the Registrar to make an enquiry or to initiate appropriate proceedings for the purpose of examining as to whether there should be winding of the registered Society. As a matter of fact on receipt of such direction, it seems the Registrar of Co-operative Societies has issued a further direction regarding making investigation obviously as contemplated under Section 82 of the Co-operative Societies Act. Keeping in view of the various provisions contained and the nature of direction, it must be construed that on the basis of direction given by the Government, the Registrar has taken up the matter and directed for investigation under Section 82. Thereafter it would be open to the Registrar to consider as to whether there should be winding up of the registered society. Obviously, the Registrar has to follow the procedure contemplated under section 137. Thereafter, if a decision is taken for winding up of the Society, appeal can be filed before the State Government under Section 152 (2)(v). Even otherwise the State Government has also the power to call for the records under section 18 2(2) and pass appropriate orders.

8. Viewed in the above light, it cannot be said that any final decision has already been taken for winding up of the Co-operative Societies. On the other hand, it must be taken that the Government had given only a direction for initiation of appropriate proceedings and therefore, the prayer of the writ petition to quash the direction dated 29.11.2001, cannot be accepted. However, it is made clear that the aforesaid direction of the Government must be construed as a direction to initiate appropriate proceedings and such direction cannot be considered as a final decision to wind up.

9. So far as W.P.No.9050/2002 is concerned, it is contended by the learned counsel for the petitioner that such permission has been accorded merely because the Government have directed the Registrar of Cooperative Societies to take appropriate action for winding up of the Federation. Mere perusal of the notice dated 28.12.2001 fortifies the aforesaid contention. Even in the impugned order though there is reference to various financial constraint and the fact that loss has been incurred, it is apparent that the primary decision for according the consent appears to be the so called decision of the Government to wind up the Federation. As a matter of fact, in the said impugned order, after referring to the financial loss, it has been specifically mentioned:- ".....In the circumstances, the Government in public interest have decided for winding up of Tamil Nadu Cooperative Oil Seeds

Federation Limited and accordingly issued orders in G.O.(Ms).No.345 Agriculture(OS)Department dated 30.11.2001. Hence the application filed by the Management of Tamil Nadu Cooperative Oil Seeds Growers' Federation Limited, Chennai seeking permission for retrenchment of 147 employees is accepted by the Government and accordingly the Tamil nadu Cooperative Oilseeds Growers' Federation Limited, Chennai is permitted to retrench 147 workers and employees as shown in the annexure to this order.....".

10. Law is well settled that while considering the question of according permission under Section 25 N of the Industrial Disputes Act for retrenchment, the authority is required to act in a quasijudicial manner under Section 25N(2) of the said Act, the employer has to clearly state the reasons for the retrenchment under Section 25N(3). The Government or the specified authority is required to make such enquiry as it thinks fit and it is also required to afford reasonable opportunity of hearing to the employer, workmen and the persons interested and thereafter may. "..... Having regard to the genuineness and adequacy of the reasons stated by the employer, the interest of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission". It is thus obvious the Government or the authority has to apply its independent mind to all the relevant circumstances.

11. In the present case, it seems that the respondent No.1 is particularly swayed away by the so called decision of the Government to wind up the Federation. As already pointed out as a matter of fact, the Government had merely initiated the proposal relating to winding up and by the time the impugned permission was granted no such winding up had been directed either by the Registrar who is the actual authority, under section 137 or even by the Government. The mere initiation of the proceedings for winding up or the mere proposal for winding up the Federation has been erroneously construed by the respondent No.1, as a decision to wind up the Federation.

12. Moreover in the impugned order, there is no reference by the respondent No.1 to the various objections raised on behalf of the present petitioner and there is no application of mind to the relevant circumstances.

13. Having regard to the facts and circumstances of the case, since an order has been mechanically passed, such order is required to be quashed. It is however made clear that it would be open to the authorities to consider the matter afresh in accordance with law. Accordingly, W.P.No.9050/2002 is allowed to the extent indicated above and W.P.No.9051/2002 is disposed of subject to the observation made. There shall be no order as to costs.

Index:Yes

Internet:Yes

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To

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rep. by the Secretary to Government,
Labour and Employment Department,

Fort St.Geroge, Chennai - 600 009.

2. The State of Tamil Nadu represented by
Special Commissioner and Secretary
to Government, Agriculture Department,
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3. The Chairman and Managing Director,
Tamil Nadu Cooperative Oil seeds Growers'
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55, Thiru Vi.Ka. Industrial estate,
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